

Federal Deposit Insurance Corporation

§ 348.6

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the FDIC.

(3) The FDIC may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 348.5 Regulatory Standards exemption.

(a) *Criteria.* The FDIC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 348.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the FDIC certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The FDIC, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The FDIC applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the

HHI to increase by more than 200 points. This presumption shall not apply to depository organizations subject to the Major Assets prohibition of § 348.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a "troubled condition" as defined by 12 CFR 303.14(a)(4) at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the FDIC notifies the affected depository organizations otherwise. The FDIC may require termination of any interlock permitted under this section if the FDIC concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The FDIC may shorten this period under appropriate circumstances.

§ 348.6 Management Consignment exemption.

(a) *Criteria.* The FDIC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 348.3 if the FDIC, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or